

EXHIBIT 87

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1 CONFIDENTIAL - L. Rabinowitz

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re: Chapter 11 Case No.
6 LEHMAN BROTHERS HOLDINGS INC., (Jointly Administered)
et al.,

7 Debtors.

8 -----x

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11 * * * CONFIDENTIAL * * *

12 VIDEOTAPED DEPOSITION OF LAURENCE RABINOWITZ

13 New York, New York

14 September 4, 2013

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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 65270

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 2 of 1.4 million, constitutes a material variation
 3 within the meaning of Holme v. Brunskill. I
 4 understand that to be the position.

5 Q. Why don't you turn to the forfeiture
 6 letter. Do you have that?

7 A. I have it.

8 Q. And I'm particularly interested in
 9 your understanding as -- of what it is that
 10 Canary Wharf was giving up and what it retained
 11 in terms of claims against LBL. What is your
 12 understanding?

13 A. It was giving up no claim against LBL
 14 under the contract at all. That's clear from
 15 the proviso to paragraph 4. What it appears to
 16 have been giving up is the possibility of a
 17 claim for an administrative expense beyond 1.5
 18 million.

19 Q. Okay.

20 A. I don't know whether there was a claim
 21 which went beyond 1.5 million.

22 Q. All right. And looking at the proviso
 23 that's on the carryover paragraph that's on page
 24 5. It says, "provided that LBL agrees that we
 25 and/or CWML" -- I guess that's Canary Wharf in

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 2 both cases -- "may claim against LBL as an
 3 unsecured creditor for any unpaid rent and
 4 estate charge and any other sums falling due
 5 under the lease up to the date of forfeiture,"
 6 which you understood to be December 10, 2010,
 7 correct?

8 A. Yes, correct.

9 Q. Is there any reference to any amounts
 10 that might otherwise have fallen due following
 11 forfeiture?

12 A. None of the proviso deals with claims
 13 for unpaid rent and estate charges falling due
 14 under the lease up to the date of forfeiture.

15 Q. Do you know why the draftsman of this
 16 document did not expressly preserve a claim
 17 against LBL for rents or other amounts that
 18 would have fallen due after the date of
 19 forfeiture?

20 A. I don't know why the draftsman drafted
 21 this in the way that he or she did.

22 Q. Looking again at Schedule 4 to the
 23 lease, which is Exhibit 3, is it fair to
 24 characterize the language in 6(g) as a catchall?

25 A. You could describe it as a catchall.

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 2 It's plainly intended to ensure that whatever
 3 might otherwise release the surety should not do
 4 so, say where you have a release under seal.

5 Q. I can show you the language of Mr.
 6 Millett's opinion if you want, but -- well, why
 7 don't we do that.

8 (Exhibit 106, Initial Declaration of
 9 Richard Millet, Q.C., marked for
 10 identification, as of this date.)

11 BY MR. ISAKOFF:

12 Q. We've marked as Exhibit 106 Mr.
 13 Millett's first opinion in this case, and I'd
 14 ask if you would turn to paragraph 62 on page
 15 28, which is where he discusses paragraph 6(g),
 16 and he says, "As to paragraph 6(g), this is a
 17 very widely drawn catchall," which I think you
 18 agree with; is that correct?

19 A. It's not an unreasonable way of
 20 describing it.

21 Q. It says, "English courts have been very
 22 loath to allow creditors to use them to fix
 23 guarantors with liability that they otherwise
 24 would not have had," and he cites the West
 25 Horndon case. Do you agree with him?

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 2 A. I think he's stating the proposition
 3 very widely. The West Horndon case is an
 4 example of a case in which the court looked at a
 5 provision which was an anti-discharge provision
 6 which was widely drawn, and concluded that it
 7 had to be interpreted in a way which was limited
 8 in the context of that case, but that was very
 9 much as a result of the other provisions in that
 10 case.

11 I don't -- I'm not sure I would infer
 12 from that in the way that he does that there's
 13 some general proposition that you shouldn't give
 14 the words the meaning that they have. In my
 15 view, the English court would give the words the
 16 meaning that they have.

17 Q. I know we -- I asked you, maybe
 18 without reference -- well, I know I asked you
 19 without reference to the proviso of the
 20 forfeiture letter as to whether you were aware
 21 of what claims Canary Wharf had asserted against
 22 LBL in the administration in the UK.

23 Do you know, putting it more
 24 specifically, whether Canary Wharf has asserted
 25 any claims against LBL that would be

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 2 attributable to damages arising from rent
 3 post-forfeiture?
 4 A. Against LBL?
 5 Q. Yes.
 6 A. I don't have a clear recollection of
 7 that one way or the other, I'm afraid, sitting
 8 here.
 9 Q. Did you ever know?
 10 A. I probably did know, yes.
 11 Q. What facts would you need to know in
 12 order to know whether any of the unpaid rent as
 13 of the time of forfeiture would have qualified
 14 as an administration expense under English law?
 15 A. I would need to know whether the
 16 administrators were occupying and using the --
 17 the property which was the subject of the lease
 18 agreement.
 19 Q. Would the administrators themselves
 20 have to occupy it or could it be through
 21 sub-tenants?
 22 A. I think there's some English authority
 23 which says that the fact that they are
 24 sub-tenants is not relevant to the question of
 25 whether they're occupying it for the purposes of

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 2 opinion, specifically paragraph 63, and you're
 3 discussing Mr. Millett's contention that the
 4 forfeiture letter is arguably a material
 5 variation within the meaning of Holme v.
 6 Brunskill, and you say in the second sentence of
 7 paragraph 63, "Mr. Millett first contends (on
 8 the basis of two 19th century cases which do not
 9 appear to have been subsequently cited) that a
 10 variation to the principal contract imposed by
 11 statute will discharge the guarantor."

12 And my question is whether you believe
 13 that that is an accurate statement of English
 14 law?

15 MR. DeLEEUW: Objection to form.

16 A. Just to be clear, you're asking me
 17 whether what Mr. Millett says, that a variation
 18 to the principal contract imposed by statute
 19 will discharge the guarantor, that is an
 20 accurate statement of English law.

21 Q. Thank you.

22 A. What I would say about -- in answer to
 23 that question is, as Mr. Millett indicates,
 24 there are two 19th century cases which do
 25 suggest that that will be the result of a

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 2 being an administrative expense.
 3 Q. So there's some authority that it's
 4 not relevant. Is there any authority that it is
 5 relevant?
 6 A. I only have in mind the Goldacre case,
 7 which says that it's not relevant.
 8 Q. And are you aware of any contrary
 9 authority?
 10 A. Sitting here, none springs to mind.
 11 Q. Are you an expert in the field of
 12 insolvency proceedings in the UK?
 13 A. I wouldn't say I was an expert. I
 14 have given advice and been involved in giving
 15 advice in insolvency proceedings, but I
 16 wouldn't -- I don't mark myself as an expert in
 17 itself.
 18 Q. Just to put it more specifically, you
 19 would not regard yourself as an expert on the
 20 subject of what it takes to qualify as an
 21 administration expense under English law such as
 22 we have just been discussing, correct?
 23 A. I wouldn't regard myself as qualified
 24 to claim to be an expert on that area.
 25 Q. Would you turn to page 27 of your

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 2 variation to the principal contract introduced
 3 by statute. I'm not aware of any authority
 4 which says that those cases are not good law,
 5 and it would follow that that is likely to be
 6 the position in English law.
 7 Q. Okay. 19th Century cases can still be
 8 valid under English law, correct?
 9 A. Well, 19th Century cases, in the
 10 general terms you have put it, of course they
 11 can be relevant in English law, but it kind of
 12 depends on the context of those cases, and in
 13 particular, since I know this is the subject
 14 we'll come onto, cases about leases and rents,
 15 the law has changed a great deal. So you often
 16 find cases which say something in the 19th
 17 Century which are no longer applicable today
 18 because of shifts in the law, which means that
 19 what is said in those cases is no longer
 20 accurate.
 21 Q. So you contend.
 22 MR. DeLEEUW: Objection. Please just
 23 ask questions.
 24 MR. ISAKOFF: Well, I move to strike
 25 the last as nonresponsive in that case